



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOO - 175054

PRELIMINARY RECITALS

On June 18, 2016, the above petitioner filed a hearing request under Wis. Admin. Code § HA 3.03(1), to challenge a decision by the Burnett County Department of Social Services regarding FoodShare benefits (FS). The hearing was held on July 14, 2016, by telephone.

The issue for determination is whether social security payments made on behalf of the petitioner's children to his former wife, who does not live in his household, count as income when determining his FoodShare allotment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]

Burnett County Department of Social Services
7410 County Road K, #280
Siren, WI 54872

ADMINISTRATIVE LAW JUDGE:

Michael O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Burnett County.
2. The petitioner and his former wife share physical placement of their four minor children equally. *Exhibit 3.*
3. The petitioner's former wife remarried. Her husband died and her and the petitioner's four children began receiving social security payments, with her acting as their representative payee.
4. The petitioner's former wife does not give any of the social security payment to the petitioner. *Exhibit 1.*
5. The county agency counted the social security payments the petitioner's children received when determining the income used to determine the petitioner's FoodShare allotment.

DISCUSSION

The petitioner and his former wife have four minor children. They share custody equally. She remarried, and her husband died, which allowed her children to receive social security payments. She is their representative payee. Although she does not share these payments with the petitioner, the county agency, at the direction of the department's Help Desk, counts the payments when determining his FoodShare allotment. He contends that this inclusion overstates his household's income and leaves him with a smaller FoodShare allotment than he is entitled to.

The county agency was skeptical of counting payments that went solely to the mother's household as the petitioner's household income. The Help Desk in response to a query told the county worker that the social security income counts when determining the petitioner's benefits because that "income follows the child" and is "correctly listed on both cases." *Exhibit 2.* The Help Desk provided no legal authority for its position. The agency worker believes that the authority for the Help Desk's position is found in the *FoodShare Wisconsin Handbook*, § 4.3.4.2., which dictates what unearned income counts when determining benefits. That section instructs workers to count "Net SSI payments" and "Gross Social Security payments less any repayments withheld due to previous overpayments of Social Security benefits."

FoodShare benefits generally depend upon the income actually available to the household, and nothing in the policy found at § 4.3.4.2 indicates that social security follows a child into a household that has no access to those payments. The idea of a household is important because the program's definition of income refers to "household" rather than "individual" income. *See* 7 CFR § 273.9(b). A FoodShare household, or food unit, consists of one or more persons who live in the same household and purchase and prepare food together for home consumption. *FoodShare Wisconsin Handbook* § 3.3.1; 7 CFR § 273.1(a)(3). A review of the FoodShare rules and policies illustrates that "income" usually refers to money directly available to the household to cover its expenses. In general, income includes "all income from whatever source" unless it is specifically excluded. *Id.* But income does not include "[m]oneys withheld from an assistance payment..." 7 CFR § 273(9)(b)(5)(i). Among the exclusions from income is "[a]ny gain or benefit which is not in the form of money payable directly to the household." 7 CFR § 273.9(c)(1). Likewise, the *FoodShare Wisconsin Handbook*, § 4.3.4.1, instructs county agencies not to count unearned income if it "isn't available to the FS group." (Wisconsin's terminology differs slightly from the federal government's, but a FoodShare group is more restrictive than a FoodShare household, so one cannot be part of a group without also being part of the household. *See diagram in FoodShare Wisconsin Handbook*, § 3.3.1.1.)

These rules reflect that the FoodShare program is meant to serve “those households whose incomes are determined to be a substantial limiting factor in permitting them to obtain a more nutritious diet.” 7 CFR § 273.9(a). Thus, eligibility depends upon the amount of money each household has available to buy food each month. When a couple divorces and moves apart, they, by definition, live in separate households, and each of these households has its own income, separate from the other’s, from which it must meet its own needs, also separate from the other’s.

All of the social security paid on behalf of the children goes directly to their children’s mother. She, as their representative payee “must use benefits to provide for the beneficiary’s current needs such as food, clothing, housing, medical care and personal comfort items, or for reasonably foreseeable needs.” *Social Security Program and Operations Manual System (POMS)*, § GM 602.001. But as long as she spends it in her children’s best interests, she “receives the benefit with the full right and duty to spend it...according to [her] best judgment.” *Id.* This authority allows her to use the payments to meet the needs of her household and not his. And as long as she uses the funds to provide for her children’s needs—there is no evidence that she does not—it is difficult to imagine a situation in which the petitioner could successfully petition to replace her as payee and gain control of the payments. After all, his children receive this money only because his former wife’s husband died, meaning that the purpose of the funds is to replace her deceased husband’s financial contribution to her household.

It is true that the petitioner may benefit indirectly when his former wife buys clothes for the children. But such amorphous benefits are not of the type that count as his household’s income when determining his household’s benefits. This is income received by his former wife’s household, and as long as he has no means to force her to share the payments with him, it is not income he or his children can use to meet any expense or obligation incurred by his household. Thus, although his children are considered part of his FoodShare household, their social security income is not available to his household. Under FoodShare rules, it cannot be considered when determining his household’s FoodShare allotment.

The petitioner is entitled to additional FoodShare, but I cannot tell how much more he should get because the agency did not include hearing notices or calculations among its documents. I will remand this to the agency to determine what his allotment should be and whether he is entitled to retroactive benefits. If he disagrees with the agency’s determination, he may file a new appeal.

CONCLUSIONS OF LAW

The county agency incorrectly determined the petitioner’s FoodShare allotment because it included social security payments not available to his household when determining his household’s income.

THEREFORE, it is

ORDERED

That this matter is remanded to the county agency with instructions to redetermine the petitioner’s FoodShare allotment. When doing so, it shall not include the social security payments paid to his former wife on his children’s behalf when determining his household’s FoodShare allotment. This action shall be retroactive based upon the date of the petitioner’s application. If necessary, the department shall ensure that he receives a supplemental allotment. The department shall perform these actions within 10 days of the date of this decision. If the petitioner disagrees with the agency’s determination he may file a new appeal.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

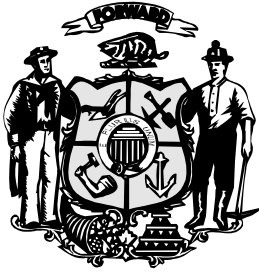
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this _____ day of 27th day of
July, 2016

\s _____
Michael O'Brien
Administrative Law Judge
Division of Hearings and Appeals

**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on July 27, 2016.

Burnett County Department of Social Services
Division of Health Care Access and Accountability